313 U.S. 565

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

McQUAY-NORRIS MANUFACTURING COMPANY,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 862

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF

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CASE AND STATUTES CITED

CASE

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STATUTES

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A

SUMMARY STATEMENT OF THE MATTER INVOLVED

Respondent issued a complaint charging petitioner with the commission of unfair labor practices under sections 8(1) and 8(5) of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. Sec. 151-166 (R. 499-503; App. 239-243).* Respondent held a hearing pursuant to Section 10, subdivisions (b) and (c) of the said Act, at which oral testimony

* Page references to the original record certified by the National Labor Relations Board to the Circuit Court of Appeals are designated by the letter "R." Page references to appendix to petitioner's brief filed in the Circuit Court of Appeals are designated "App."

was taken (R. 1-405, App. 1-235) and exhibits presented (R. 401-1141; App. 236-490). The respondent made findings of fact (R. 1188-1196; App. 509-521) and conclusions of law (R. 1196-1197; App. 521), and issued an order (R. 1197-1198; App. 522-523)

(1) requiring Petitioner to cease and desist from

> "(a) Refusing to bargain collectively with United Automobile Workers of America, Local 226, as the exclusive representative of the production employees at its Indianapolis plant, excluding clerical and supervisory employees;
>
> "(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act."

(2) Requiring Petitioner to take certain affirmative actions.

Petitioner petitioned the United State Circuit Court of Appeals for the Seventh Circuit for review of the order of respondent. (R. 1206-1208; App. 528-529). Respondent requested enforcement of its order. (R. 1213-1217; App. 532-535).

The Court held the respondent's order was proper and allowed its request for enforcement. (*Post.* p. 15-24). It entered a decree identical with the respondent's order. (*Post.* p. 24-26).

The respondent found that petitioner had refused to bargain as required by Section 8(5) of the Act, in that

petitioner refused to insert, in the written contract which it was willing to execute with the Union, a clause granting the Union exclusive recognition as the representative of the employees in the appropriate unit; and that, by refusing to bargain, the petitioner engaged in unfair labor practices within the meaning of Section 8(1) of the Act.

The issue is whether an order and decree that petitioner "cease and desist from * * * in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act" are supported by the respondent's finding that petitioner had refused to bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit; there being neither any contention nor any finding of any other unfair labor practice.

B

STATEMENT OF JURISDICTIONAL BASIS

This Court has jurisdiction under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. Sec. 347(a). The United States Circuit Court of Appeals for the Seventh Circuit handed down its opinion on December 23, 1940, and entered a decree enforcing the respondent's order on January 16, 1941.

C

QUESTION PRESENTED

As petitioner has indicated, the question is whether a finding only that the petitioner has refused to bargain

collectively, by refusing to recognize the union as the exclusive representative of the employees, supports a decree that petitioner cease and desist from

> "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act."

D

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The decree of the United States Circuit Court of Appeals for the Seventh Circuit is in conflict with the decision of this Court in *National Labor Relations Board v. Express Publishing Company,* No. 442, decided March 3, 1941, 9 U. S. Law Week, p. 4240.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify to this Court for its review and determination, all proceedings in the case numbered and entitled on its docket No. 7269, McQuay-Norris Manufacturing Company, petitioner, vs. National Labor Relations Board, respondent; that the judgment of said Circuit Court of Appeals be reversed by this Honorable Court; and that

your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

McQuay-Norris Manufacturing Company

By

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